

It is obvious, however, that the legal establishment and regulation of all ports, to the extent to which the regulation of marine commerce, and the collection of revenue from it, have been delegated to the government of the Union, must necessarily fall within the scope of its authority, as incident to those powers; for, without the power to confine such trade to certain specified ports, it would be difficult or impossible to collect duties on the tonnage of ships or the importation of merchandise. Upon these principles, therefore, all the public ports of the United States, since the establishment of the federal government, have been described, and, in a great measure, regulated, as such, under its authority. (i)

In all public ports there are three kinds of rights, the distinct nature of which, owing to the peculiar form of our government, it becomes more necessary to attend to here than in England. There are, first, public rights, affecting commerce in general, or those in relation to war and foreign intercourse; secondly, public rights involving the powers of the internal government of the Republic; and lastly, private rights, such as the ownership of the soil, or any peculiar franchise.

It is declared by the federal constitution, that 'no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another;' that 'no state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws;' and that 'no state shall, without the consent of Congress, lay any duty of tonnage.' (j)

These rules being fundamental cannot be evaded in any manner whatever; no preference can be given by requiring the payment of tolls or wharfage of any ships or goods, coming from other states of the Union, not demandable on those of this state; nor can duties or tonnage of any kind be exacted of ships or goods coming into our ports from any other of the United States, or from any foreign country, without the consent of Congress. And although it had been found expedient to collect in the port of Baltimore, and in many others of the ports of this Union, as in England, a small duty of tonnage, or port duty, to be appropriated to the sole purpose of clearing the port itself of all obstructions, and keeping it in good navigable order, and for repairing the public

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(i) *Gibbons v. Ogden*, 9 Wheat. 193; *Wilson v. The Black Bird Creek Marsh Company*, 2 Peters, 245.—(j) Const. U. S., art. 1, s. 9 and 10.